

II. REMARKS

Introductory Comments

Claims 20-23 and 69-79 were examined in the Office Action under reply and stand rejected under 35 U.S.C. §102. These grounds of rejection are believed to be overcome by this response and are otherwise traversed for reasons discussed in detail below.

Applicants note with appreciation the withdrawal of the previous rejections under 35 U.S.C. §112, first and second paragraphs.

Overview of the Above Amendments

Claim 20 has been amended to recite the invention with greater particularity. Specifically, claim 20 now specifies that the mannose binding protein “binds a protein having mannose terminated glycosylation.” Support for this recitation can be found throughout the specification at e.g., page 6, lines 20-22.

Amendment of claim 20 is made without prejudice, without intent to abandon any originally claimed subject matter, and without intent to acquiesce in any rejection of record. Applicants expressly reserve the right to file one or more continuing applications containing the unamended claims.

Rejections under 35 U.S.C. §102

Claims 20-23 and 69-79 were rejected under 35 U.S.C. §102(b) over EP 318,216 to Houghton et al. (“Houghton-1”) and under 35 U.S.C. §102(a) over EP 388,232 to Houghton et al. (“Houghton-2”). Claims 20-23 and 69-79 were also rejected under 35 U.S.C. §102(e) over U.S. Patent No. 5,308,750 to Mehta et al. (“Mehta”). Houghton-1 and Houghton-2 are said to disclose “an isolated antibody that is reactive with HCV” and “kits for detecting HCV with antibodies and HCV antibodies bound to a solid support.” Office Action, pages 4 and 5. Mehta purportedly describes “antibodies to the E2 of HCV for detection of HCV” and “antibodies to the E1 region (HCV env).” Office Action, page 5. However, applicants respectfully submit that none of the cited art anticipates the claimed invention.

In order to anticipate a claim, a single source must disclose all of the claimed elements “arranged as in the claim.” *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *Connell v. Sears Roebuck & Co.*, 220 USPQ 193, 198 (Fed. Cir. 1983). Moreover, the law requires identity between the claimed invention and the prior art disclosure. *Kalman v. Kimberly-Clar Corp.* 713 F.2d 760, 771, 218 USPQ 2d 781, 789 (Fed. Cir. 1983, cert. denied, 465 U.S. 1026 (1984)). These requirements have not been satisfied.

In particular, all of the rejected claims pertain to assay kits for detecting an HCV glycoprotein having mannose-terminated glycosylation. The assay kit includes, among other things, a mannose-binding protein that binds a protein having mannose terminated glycosylation. None of the cited art describes a mannose-binding protein as present in the kit, as there was no recognition until the current invention that HCV E1 and E2 existed in the mannose-terminated form. Accordingly, since the cited art fails to teach each and every element as present in the claims, the rejections under 35 U.S.C. §102 should be withdrawn.

III. CONCLUSION


Applicants respectfully submit that the claims define a patentable invention. Accordingly, a Notice of Allowance is believed in order and is respectfully requested.

Please direct all further communications in this application to:

Michael J. Moran, Esq.
Chiron Corporation
Intellectual Property - R440
P.O. Box 8097
Emeryville, CA 94662-8097
Telephone: (510) 923-2969
Facsimile: (510) 655-3542.

Respectfully submitted,

Date: 6/1/05

By: 
Roberta L. Robins
Registration No. 33,208

CHIRON CORPORATION
Intellectual Property - R440
P.O. Box 8097
Emeryville, CA 94662-8097